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10/532,071

12/13/2005

Adam Bonne

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08/29/2008

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EXAMINER

LEE, KEVIN L

ART UNIT

PAPER NUMBER

3753

NOTIFICATION DATE

DELIVERY MODE

08/29/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/532,071 | Applicant(s) BONNE ET AL. | |
| | Examiner KEVIN L. LEE | Art Unit 3753 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-36 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-36 of copending Application No. 10/536,090. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Drawings

The drawings are objected to because the lines, numbers and letters are not uniformly thick and well defined, clean and black (poor line quality) in Figures 1a-7. In addition, the numbers and reference characters are not plain and legible in Figures 1a-7. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is

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being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 35 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The recitation of “any feature or aspect” is vague and indefinite.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11, 13-17, 21, 22, 25, 26, 31, 32 and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Raetz et al (U.S. Patent No. 1,764,181).

The patent to Raetz et al discloses an apparatus for controlling fluid in a flow passage, the apparatus comprising hindering means (15) for reducing the flow in the passage. The hindering means (15) is arranged to move between a first and a second position under influence of a pressure difference between a first end (12) and a second end (8), wherein the reduction of the flow in the flow passage is larger when the hindering means is in the first and second position than when the hindering means is in an intermediate position, see Figure 2. The hindering means (15) includes a leakage path (13), page 1, lines 66-91. In particular regards to claims 7, 11 and 13, the metallic spring of Raetz et al is readable as having adjustability in the spring force due to the surrounding temperature of the fluid. The spring force rate of a spring usually decreases in response to an increase in the temperature.

Claims 1-12, 23, 24 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Weinmann et al (U.S. Patent No. 6,367,767). The patent to

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Weinmann et al discloses an apparatus comprising hindering means (5) movable between a first position (18) and a second position (18') based on whether the fluid pressure is exerted through the first position or the second position. The reduction of the flow in the fluid passage is larger when the hindering means is in the first or second positions. An electrical adjustable element (12) is provided to change a bias in the hindering means, col. 3, lines 1-11.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raetz et al in view of Gallagher (U.S. Patent No. 3,754,568). The patent to Gallagher et al teaches providing a resilient sealing member for the plug member (24) so that the plug member sealingly engages the sealing member when in the closed position. In view of the teaching of Gallagher et al, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a resilient sealing member in the valve of Raetz et al to enhance the sealing effect of the valve member against the valve seat to prevent leakage past the valve seat.

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Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raetz et al in view of Ledtje et al (U.S. Patent No. 4,862,907). The apparatus of Raetz et al lacks having a ceramic sealing member. The patent to Ledtje et al teaches providing a ceramic sealing member for a valve member, col. 2, lines 54-63. In view of the teaching of Ledtje et al, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a ceramic sealing member sealingly engaging the hindering means of Raetz et al to enhance the sealing effect of the valve member against the valve seat to prevent leakage past the valve seat.

Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raetz et al in view of Hallden et al (U.S. Patent No. 4,215,746). The patent to Hallden et al teaches providing a pressure indicator (30) to measure the fluid pressure in the line (12), col. 2, lines 43-46. In view of the teaching of Hallden et al, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include pressure indicator in the flow passage of Raetz et al for the purpose of measuring the fluid pressure in the line, both at the first end or the second end.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raetz et al in view of Gregerson et al (U.S. Patent No. 3,722,537). The flow passage of Raetz et al lacks having at least part of the flow passage comprising a transparent material. The patent to Gregerson et al teaches part of a flow

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passage being of a transparent material so that the liquid passing through the flow passage can be observed, col. 2, lines 14-22. In view of the teaching of Gregerson et al, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form at least a portion of the flow passage of Raetz et al out of a transparent material for the purpose of visually observing the liquid passing through the flow passage.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weinmann et al in view of Dunkelis (U.S. Patent No. 3,665,958). The apparatus of Weinmann et al lacks having means for locking the hindering means in the first or second positions. The patent to Dunkelis teaches providing a magnet (26) to lock a valve member (10) in a position against the valve seat, col. 2, lines 24-49. In view of the teaching of Dunkelis, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a magnet in the apparatus of Weinmann et al for the purpose of locking the hindering means against the valve seat.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raetz et al. The apparatus of Raetz et al is made of metal. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the apparatus of plastic as an alternate material that is durable and lightweight.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN L. LEE whose telephone number is (571) 272-4915. The examiner can normally be reached on MONDAY-THURSDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, GREGORY HUSON can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KEVIN L LEE/
Primary Examiner, Art Unit 3753